

MARY AMBLER LANY
ASSISTANT GENERAL COUNSEL

NCS PEARSON
5601 GREEN VALLEY DRIVE
BLOOMINGTON, MN 55437

TEL [952] 681-3121
FAX [952] 681-3066

lany@ncs.com

June 20, 2002

VIA ELECTRONIC DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 – 12th Street Southwest
Washington, DC 20554

RE: Telephone Number Portability, CC Docket No. 95-116

Ex Parte Presentation of NCS Pearson, Inc. commenting on Ex Parte Presentation Regarding MBI Administration on May 23, 2002, by Michael K. Kurtis and Lisa L. Leibow of Kurtis & Associates on behalf of Missouri RSA No. 7 Limited Partnership d/b/a Mid-Missouri Cellular, Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, Illinois Valley Cellular RSA 2-III Partnership, Public Service Cellular, Inc., Northwest Missouri Cellular Limited Partnership, California RSA No. 3, Limited Partnership d/b/a Golden State Cellular, and Farmers Cellular Telephone, Inc., along with John Kuykendall of Kraskin, Lesse & Cosson, LLP, on behalf of the Rural Cellular Association, and Caressa D. Bennet of Bennet & Bennet, PLLC, on behalf of the Rural Telecommunications Group

Dear Ms. Dortch:

This letter comments on, and responds to, the Ex Parte Presentation made on May 23, 2002, by Michael Kurtis and Lisa Leibow of Kurtis & Associates, P.C., John Kuykendall of Kraskin, Lesse & Cosson, LLP and Caressa D. Bennet (the “May 23, 2002 Presentation”) regarding MBI Administration referenced above. This letter is filed electronically in CC Docket No. 95-116 pursuant to 47 C.F.R. §1.1206(b) as an ex parte presentation.

NCS Pearson, Inc. (“NCS”) is the neutral third party provider of Mobile Identification Number (MIN) Block Identifier (“MBI”) services pursuant to the Master Service Agreement For MBI Assignment and Administration System Between NCS Pearson, Inc., and MBI Oversight LLC (“the MSA”). NCS’ goal is to provide equitable MBI services to all wireless carriers while at the same time protecting NCS’ business interests. This presentation is therefore limited to those matters that directly affect NCS as the MBI Administrator.

1. The Use of a Non-Disclosure Agreement to Prevent Public Disclosure of the MSA. The May 23, 2002 Presentation raises criticism of NCS’ requirement that wireless service providers execute a non-disclosure agreement (“NDA”) before it will provide them a copy of the MSA, and particularly objected to language in the NDA prohibiting disclosure of the MSA to the FCC. NCS requires an NDA before releasing the MSA to wireless carriers because it contains confidential information, which, if released to our competitors, could cause NCS to be at a significant competitive disadvantage. Allowing carriers or their counsel

to release the MSA to the FCC or any other agency or entity without restrictions on disclosure would circumvent the confidentiality NCS is trying to maintain. It is unreasonable to assume that NCS Pearson would allow the MSA to be made a part of the public domain and available to its competitors. On the other hand, NCS has no desire to prevent the FCC's review of the MSA, and in fact, encourages such review. NCS, therefore, disclosed the MSA to the FCC for its review pursuant to 47 CFR § 0.459 on June 13, 2002.

2. The LLC. The May 23, 2002 Presentation asserts that the MBI Oversight LLC ("LLC") is an exclusive organization composed of members of the four major wireless carriers. It is NCS' understanding that membership in the LLC is open to all wireless carriers. The attached presentation, given at the latest CTIA Critical Issues Forum by the Project Executive from the LLC, gives additional information on how the LLC is structured and specifically states that additional membership is encouraged. Additional information regarding the LLC and membership is available by contacting the attorney for the LLC, Dan Sciuillo, MBI Oversight LLC, Berenbaum, Weinshienk & Eason, P.C., 2600 Floor-Republic Plaza, 370 Seventeenth Street, Denver, Colorado 80202-5626, Email: Dsciuillo@bw-legal.com.
3. Grandfathering MBIs Without the Execution of a User Agreement. The FCC has been requested to require that all MBIs be grandfathered without the execution of a User Agreement. While NCS firmly believes that a User Agreement is necessary for on-going MBI administration, it has been discussing with Kurtis & Associates and the LLC the possibility of using an alternative agreement for grandfathering only. NCS is engaged in efforts to address and resolve the concerns of the rural carriers. On June 18, 2002, NCS sent a proposed agreement for MBI "grandfathering only" to Michael Kurtis and Lisa Leibow of Kurtis & Associates, John Kuykendall of Kraskin, Lesse & Cosson, LLP, and Caressa D. Bennet of Bennet & Bennet, PLLC.

However, whether or not an alternative arrangement is reached for MBI grandfathering, NCS cannot act as the MBI Administrator without an appropriate User Agreement delineating the rights, responsibilities, and liabilities of the parties. It must be understood that the MSA is an agreement between NCS and the MBI Oversight LLC, and does not bind the individual users unless and until they execute a User Agreement. In addition, only portions of the MSA are incorporated into the User Agreement. The MSA contains a number of provisions that specifically affect the individual carriers such as remedies for non-performance by the contractor, pricing, change management, and equity of services for all carriers. It also contains a number of provisions specifically related to MBI administration and the MBI system that will be dealt with by the LLC. These include, for example, procedures for the correction of systems problems, and delivery dates for acceptance testing of the MBI administration system. The User Agreement incorporates the day to day and overall responsibilities of the individual carriers and the contractor. Included, for example, in the User Agreement are:

- a. confidentiality provisions essential to the protection of all parties, but most importantly, governing the protection of confidential carrier data.
- b. specific limitations of liability and indemnification obligations as between the individual carrier and the contractor.
- c. payment obligations for the individual carrier.

The User Agreement is contained in Exhibit A to the MSA.

4. Compliance with Laws and Regulations. The FCC is urged in the May 23, 2002 Presentation to “require that any documents that control MBI assignment be consistent with the express language and intent of any and all FCC rules, policies and procedures and ensure that they can be fully implemented without the intent being frustrated by any underlying private adhesion contracts.” The MSA was intensely negotiated on behalf of the wireless industry by the LLC. It is designed to protect all wireless carriers and ensure equity of services and pricing to all carriers. It contains remedies for non-performance by the contractor, and also requires that NCS comply with all laws, rules and regulations, including but not limited to, those governing MBI administration.
5. The MBI Guidelines and Procedures and the MBI Oversight Council. Although this was not directly raised in the May 23, 2002 Presentation, NCS wishes to advise the FCC that the processes for MBI Administration are governed by the MBI Guidelines and Procedures. The MBI Guidelines and Procedures were initially developed through an open industry forum sponsored through CTIA. Through this forum, the guidelines were approved by a consensus of the participating wireless service providers. In order to maintain the MBI Guidelines and Procedures on an ongoing basis, an open industry forum called the MBI Oversight Council (“MOC”) is being created. Membership in the council is open to any licensed US facilities based wireless service provider. Members vote on changes/additions to the guidelines and each entity is allowed one vote (a rural carrier has the same voting strength as a large wireless carrier). In addition, the MBI Oversight Council is responsible for resolving any MBI Administration escalations initiated by either a wireless carrier, or the MBI Administrator. The initial MOC meeting is scheduled to be held on June 27-28 in Minneapolis, Minnesota. All wireless carriers are invited to attend this meeting and to participate in the MOC.

If there are any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

NCS PEARSON, INC.

Mary Ambler Lany
Assistant General Counsel

3060eDS

cc:

Dick Bottorff
Vice President Telecom Services
Linda Link
Manager Products and Services, Telecom
Services
NCS Pearson
1313 Lone Oak Road
Eagan, MN 55121-1334
E-Mail: Dbottorff@ncs.com
E-Mail: llink@ncs.com

Mitch Kaufman
MBI Administration Project Executive
NCS Pearson
13624 Old Chatwood Place
Chantilly, VA 20151
E-Mail: Mkaufman@ncs.com

Barry Ohlson
Federal Communications Commission
Wireless Telecommunications Bureau
445 12th Street, S.W.
Washington, D.C. 20054
E-Mail: bohlson@fcc.gov

Jared Carlson
Federal Communications Commission
Wireless Telecommunications Bureau
Policy Division
445 12th Street, S.W., Third Floor
Washington, D.C. 20054
E-Mail: jcarlson@fcc.gov

Patrick Forster
Federal Communications Commission
Wireless Telecommunications Bureau
Policy Division
445 12th Street, S.W., Suite 2-C207
Washington, D.C. 20054
E-Mail: pforster@fcc.gov

Jennifer Salhus
Federal Communications Commission
Wireless Telecommunications Bureau
445 12th Street, S.W.

Washington, D.C. 20054
E-Mail: jsalhus@fcc.gov

Pete Sywenki
Jay Keithley
Sprint Corporation
401 9th Street, NW
Suite 400
Washington, DC 20004
E-Mail: pete.n.sywenki@mail.sprint.com
E-Mail: jay.c.keithley@mail.sprint.com

John T. Scott, III
Verizon Wireless
Vice President and Deputy General
Counsel – Regulatory Law
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005
E-Mail: John.Scott@verizonwireless.com

J.R. Carbonell
Cingular Wireless LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342
E-Mail: Joaquin.Carbonell@Cingular.com

Stephen Kraskin
John Kuykendall
Kraskin Lesse & Cosson, LLP
2120 L Street, NW
Suite 520
Washington, DC 20037
E-Mail: skraskin@klctele.com
E-Mail: jkuykendall@klctele.com

Caressa D. Bennet
Bennet & Bennet, PLLC
1000 Vermont Avenue, NW
10th Floor
Washington, DC 20005
E-Mail: cbennet@bennetlaw.com
E-Mail: milligan@bennetlaw.com

Suzanne Toller

Davis Wright Tremaine LLP
One Embarcadero Center
Suite 600
San Francisco, CA 94111
Counsel for AT&T Wireless Services, Inc.
E-Mail: Suzanne.toller@attws.com

Michael F. Altschul
Cellular Telecommunications
Industry Association (CTIA)
1250 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
E-Mail: maltschul@ctia.org

Dan Sciullo
MBI Oversight LLC
Berenbaum, Weinshienk & Eason, P.C.
2600 Floor- Republic Plaza
370 Seventeenth Street
Denver, Colorado 80202-5626
E-mail: Dsciullo@bw-legal.com

Barbara R. Fleming
11173 County Rd E
Bryan, Ohio 43506
Email: bffleming@williams-net.com